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09/851,285	05/08/2001	Harvey R. Bialk	2001-0148	3416

7590
Samuel H. Dworetsky
AT&T CORP.
P.O. Box 4110
Middletown, NJ 07748-4110

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EXAMINER

SALTARELLI, DOMINIC D

ART UNIT	PAPER NUMBER
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2623

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/851,285
Filing Date: May 08, 2001
Appellant(s): BIALK ET AL.

MAILED

FEB 06 2007

Technology Center 2600

Bialk et al
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 9, 2006 appealing from the Office action mailed April 5, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-11, 13-25, and 27 are pending.

Claims 1-11, 17-25, and 27 are the subject of this appeal.

Claims 12 and 26 have been cancelled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on November 5, 2006 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

A substantially correct copy of appealed claims 1-11, 17-25, and 27 appears on pages 1-6 of the Appendix to the appellant's brief. The minor errors are as follows:

Claims 13-16 have been omitted.

(8) Evidence Relied Upon

5,608,447	FARRY ET AL	3-1997
5,519,830	OPOCZYNSKI	5-1996
6,137,793	GORMAN ET AL	10-2000
5,559,955	DEV ET AL	9-1996
2002/0004390	CUTAIA ET AL	1-2002

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claims 1-11, 17-25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farry et al. (5,608,447, submitted by applicant Nov. 1, 2004) [Farry] in view of Opoczynski (5,519,830, submitted by applicant Nov. 1, 2004), Gorman et al. (6,137,793, submitted by applicant Nov. 1, 2004) [Gorman], Dev et al. (5,559,955, submitted by applicant Nov. 1, 2004) [Dev], and Cutaia et al. (US 2002/0004390 A1) [Cutaia].

(10) Response to Argument

A. Claims 1,11, 17-25, and 27 are patentable under 35 U.S.C. 103(a) over U.S. Patent No. 5,608,447 (Farry) in view of U.S. Patent No. 5,519,830 (Opoczynski),

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U.S. Patent No. 6,137,793 (Gorman), U.S. Patent No. 5,559,955 (Dev), and U.S.

Patent Application Publication No. 2002/0004390 (Cutaia)

Appellant's first argument is in regards to the nature of the equipment being tracked by an inventory management database, stating that Cutaia discloses tracking equipment that is installed at a "collocation facility" as opposed to equipment that is installed at a subscriber's household (page 11).

In response, the examiner contends that a piecemeal analysis that focuses on such a minor distinction between the types of building that a piece of equipment is installed in (collocation facility versus subscriber household) is alone an insufficient argument against the combination as set forth by the examiner. The tracking of equipment is a basic function of service providers of all types, and Cutaia was introduced as evidence in the prior art that this basic practice of tracking customer equipment, both in an out of a service provider network, was a common and well known practice. The primary reference, Farry, had already established the nature and location of customer premises equipment (the DET, see fig. 11 of Farry). Cutaia merely teaches it was known and desirable to track and inventory customer equipment for a service.

Appellant's second argument is in regard to the claimed limitation of assigning network resources based on the assigned capacity of network elements, where appellant argues that Farry teaches assigning permanent virtual circuits to customer

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premises equipment without considering the assigned capacity of network elements (page 12).

In response, the examiner must note that the permanent virtual circuits disclosed by Farry are in fact themselves information representative of the assigned capacity of network elements. A virtual circuit is simply a descriptive piece of information describing path, or chain of nodes, that connects a customer with a service provider. A virtual circuit doesn't have "capacity" per se, because it is nothing more than a series of instructions describing the path through a network that an information stream will take. On the other hand the availability of predefined permanent virtual circuits is information that is directly related to the capacity of the network elements, because any one network element will only support as many streams as there are permanent virtual circuits that include said network element in the paths they describe, and the number of total permanent virtual circuits represents the operating capacity of the entire network. Therefore the assignment of a permanent virtual circuit to a customer premises equipment is to provision network elements based on their assigned capacity, as claimed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Dominic Saltarelli

DS

Conferees:

John Miller


Christopher Kelley


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600